

15 Gapdlops

16 Sentence

17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF NEW YORK  
19 -----x

20 UNITED STATES OF AMERICA, New York, N.Y.

21 v. 14 Cr. 0652 (PGG)

22 LUIS LOPEZ,

23 Defendant.

24 -----x  
25 October 25, 2016  
3:00 p.m.

30 Before:

31 HON. PAUL G. GARDEPHE,

32 District Judge

## 33 APPEARANCES

34 PREET BHARARA

35 United States Attorney for the  
36 Southern District of New York

37 BY: LAURIE A. KORENBAUM

38 Assistant United States Attorney

39 LAW OFFICE OF ANTHONY L. RICCO

40 Attorneys for Defendant

41 BY: ANTHONY L. RICCO

42 STEVEN Z. LEGON

43 - also present -

44 Det. Steven Berger, Bronx Cold Case Unit

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1                   THE CLERK: I call the case of the United States of  
2 America versus Luis Lopez.

3                   Is the government ready?

4                   MS. KORENBAUM: Yes. Good afternoon, your Honor.  
5 Laurie Korenbaum for the government. With me at counsel table  
6 is Detective Steven Berger of the New York City Police  
7 Department.

8                   THE CLERK: Defendant ready?

9                   MR. RICCO: Yes. Good afternoon, your Honor. Anthony  
10 Ricco for Luis Lopez, and I'm joined at counsel table by Steven  
11 Legon.

12                  And just for the record, your Honor, seated behind me  
13 to my right is the family of Mr. Lopez and I believe over my  
14 left shoulder is the family of the deceased.

15                  MS. KORENBAUM: That is correct, your Honor.

16                  THE COURT: All right. Let me first inquire of the  
17 government. I was told that some members of Mr. Balcarran's  
18 family wish to address the Court. Is that true?

19                  MS. KORENBAUM: That is correct, your Honor.

20                  THE COURT: All right. In preparation for sentencing,  
21 I have read the presentence report dated May 11, 2016. I've  
22 read a letter from the government dated October 20, 2016. I've  
23 read a letter from defense counsel dated October 3, 2016. I've  
24 read an undated handwritten letter from Mr. Lopez as well as a  
25 typewritten letter from Mr. Lopez that is dated May 10, 2016.

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I have also read an October 24, 2016 submission from defense counsel along with the letters attached from Mr. Lopez's family, also certificates from the MDC. And then, finally, I have read five letters from Mr. Balcarran's family and friends that are in the nature of victim impact statements.

Mr. Ricco, have you read the presentence report, its recommendation, and discussed it with Mr. Lopez?

MR. RICCO: Yes, your Honor.

THE COURT: And, Mr. Lopez, have you read the presentence report and its recommendation and discussed it with Mr. Ricco?

THE DEFENDANT: Yes. Yes, your Honor.

THE COURT: Mr. Ricco, do you have any objections to the factual portions of the presentence report?

MR. RICCO: None, your Honor.

THE COURT: Does the government have any objections to the factual portions of the presentence report?

MS. KORENBAUM: We do not, your Honor.

THE COURT: Then I hereby adopt the findings of fact set forth in the presentence report.

Although I am not required to impose sentence in accordance with the Sentencing Guidelines, I am required to consider what the Sentencing Guidelines recommend in terms of a sentence.

Here, the Probation Department determined that Mr.

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158 Lopez's base offense level is 43 because he pleaded guilty to  
159 aiding and abetting murder under Title 18 United States Code  
160 Section 924(j). Mr. Lopez's offense level was reduced by three  
161 levels for acceptance of responsibility, resulting in a total  
162 offense level of 40.

163 The Probation Department determined that Mr. Lopez has  
164 no criminal record. Accordingly, has zero criminal history  
165 points and falls within Criminal History Category I.

166 Offense level 40 at Criminal History Category I yields  
167 a guidelines' range of 292 to 365 month's imprisonment.

168 Mr. Ricco, any objection to the accuracy of the  
169 guidelines' calculations as I have stated them?

170 MR. RICCO: No, your Honor.

171 THE COURT: Does the government have any objections to  
172 the accuracy of the guidelines' calculations as I have stated  
173 them?

174 MS. KORENBAUM: We do not, your Honor.

175 THE COURT: Then based on my independent evaluation of  
176 the Sentencing Guidelines, I accept the calculations set forth  
177 in the presentence report. Accordingly, I filed that the  
178 offense level is 40, the Criminal History Category is I, and  
179 the recommended range under the guidelines is 292 to 365  
180 months' imprisonment.

181 I'll hear from you, Mr. Ricco, as to an appropriate  
182 sentence.

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1 MR. RICCO: Yes, your Honor.

2 We have asked the Court to consider sentence at  
3 variance with the guidelines because we believe that there are  
4 factors present in the background and history of the defendant  
5 and circumstances of the offense which would give strong  
6 consideration to a sentence at variance with the guidelines.

7 Judge, I want to say from the outset that this case is  
8 disturbing, for a lot of reasons. One reason, of course, is  
9 that a human being lost their life, another person in the  
10 community has been killed as a result of the scourge of the  
11 sale of drugs in the community, where a lot of people in the  
12 courtroom live.

13 The case is disturbing from another aspect. I have  
14 had an opportunity to read the letters written by the family of  
15 Mr. Balcarran, and I have had the opportunity to read the  
16 letters written by the family of Mr. Lopez. It's interesting,  
17 Judge, that both letters are very similar. Both letters talk  
18 of the loss of having a father. They talk about loving  
19 individuals. They both speak of the beautiful things that were  
20 done by them. Both speak of how young people were inspired by  
21 them. But there's something missing from both letters, and  
22 that is the staggering way that drugs have destroyed the lives  
23 of people and the impact that it has on generations of people;  
24 many of them are here on both sides.

25 Many of us live in a community that's trying to come

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1 to grips with decades of the proliferation of drug sales. And  
2 what we see from these cases is that good people have no reason  
3 to doubt one word what the people have said about  
4 Mr. Balcarran, that he was pleasant and generous and  
5 compassionate, that he was giving, and that he left behind many  
6 people who grieve for his loss of life. I have no reason to  
7 doubt the statements made by Mr. Lopez's loved ones, from his  
8 parents, from his children, from his sister, where they talk  
9 about a loving, caring, compassionate man who gave a lot and  
10 continues to give. One man lost his life in the streets. The  
11 other man was a part of that event happening. Both men's lives  
12 intersected over what, Judge? The sale of drugs in our  
13 community.

14 One man threatened, as far as I know -- the defendant  
15 pled and I'm just accepting the facts as they are set forth in  
16 the PSR -- that a drug operation headed by Oscar Palmer,  
17 supplied by a guy named Efrain Lora, who has been convicted  
18 before your Honor, took over drug turf that used to belong to  
19 Mr. Balcarran, and, apparently, as set forth in paragraph 17 of  
20 the PSR, Mr. Balcarran approached Mr. Lopez and threatened him  
21 and said, You've got to pay to sell drugs here or I'm going to  
22 force you to do it. I'm going to force you out. Well, in the  
23 streets we know what that means. That means that destruction  
24 is going to follow.

25 And what are the men fighting over? They're fighting

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1 over the right to sell drugs in the community where their  
2 families reside, both the victim's family and in this case  
3 Mr. Lopez's family.

4 Mr. Lopez is sitting here today and he is weeping,  
5 Judge, and I believe that his tears are legitimate. I believe  
6 that in his heart he recognizes now what he was a part of. He  
7 recognizes how his conduct contributed to the loss of life of  
8 Mr. Caban -- I'm sorry, of Mr. Balcarran.

9 Your Honor, last week I was at the funeral of the  
10 mother of a defendant who was tried in this courthouse 38 years  
11 ago and sentenced to life, and I watched as his children cried  
12 that they had never seen their father outside of prison, that  
13 their grandkids never saw him, and I sat in that funeral parlor  
14 wondering where all of this was going to end. And I thought it  
15 was so interesting that as his children reflected upon the life  
16 of their dad, none of them considered the fact that their  
17 father was involved in a very serious, deadly business and it  
18 had enormous consequences. Those consequences resulted in him  
19 being imprisoned for the rest of his life. He was sentenced  
20 and convicted. His name is Peter Monsanto. And it just struck  
21 me, Judge, that all of these years later, decades later, that  
22 this conduct is still around and that people are unable  
23 to --communities are unable to come to grips with the conduct  
24 that apparently good men are involved with.

25 I have no reason to doubt that Mr. Balcarran was a

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1 good man, and I have no reason to doubt that Mr. Lopez was a  
2 good person, as stated in the reports. Both men were involved  
3 in a very, very harmful business, where violence and gun  
4 violence and force and extortion are part of it. Mr. Dery  
5 Caban testified that he shot and killed Mr. Balcarran. He has  
6 a cooperation agreement and he will be before the Court for  
7 sentencing one day. Currently, Mr. Caban was not a person who  
8 was involved in the drug business; he was just Mr. Lopez's  
9 cousin. And I'm also told that when all of this was done,  
10 Mr. Efrain Lora, who was convicted before your Honor, continued  
11 selling drugs out of that same location, having eliminated  
12 Mr. Balcarran.

13 Judge, we have mentioned the fact, but didn't want to  
14 overstate the fact, and perhaps we did, that Mr. Lopez, this  
15 was an event that chased him from drugs. He should have been  
16 chased the day before; perhaps this wouldn't have happened. I  
17 don't know that, Judge. Mr. Lopez was not a decision maker  
18 here. He was not a person who controlled this area. He was a  
19 street-level worker. He worked for Oscar Palmer and Luis  
20 Trujillo, and they were supplied by Mr. Lora. After this  
21 horrible event happened, the person that went on with business  
22 as usual was Mr. Lora. The person that left in fear and in  
23 shame is Luis Lopez. He is the person before you today for  
24 sentencing.

25 We told the Court a little bit about what he's been

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1 doing since that time. Not in the way, in any way, is it an  
2 explanation or an excuse for the conduct that happened here.  
3 He was a doorway, a conduit. It was his cousin who actually  
4 did the shooting, but in this business, Judge, he could have  
5 hired any kid out of the neighborhood to do this. It just  
6 didn't happen. The threat wasn't against Mr. Lopez. The  
7 threat was against Mr. Lora and Mr. Palmer and Mr. Trujillo,  
8 who used people like Mr. Lopez like pawns. And when Mr. Lopez  
9 was gone, they continued to use people in that neighborhood  
10 selling their drugs and did so for many years afterwards.

11 We spoke about Mr. Lopez's conduct since then. You  
12 know, it is one thing to come in here and say you're sorry.  
13 There used to be a great person living in Harlem; they used to  
14 call him Crocodile Tears. And then there's heartfelt remorse.  
15 They are two different things. So how do you tell which is  
16 true? Well, in this instance you have an opportunity to look  
17 over the last decade of Mr. Lopez's life and see what has he  
18 done. What did he do? What did he learn from this? How did  
19 this impact him? And what everyone says is that what it did  
20 was it had forced him to be the man that his parents always  
21 wanted him to be, which was to be a good father and a husband,  
22 to be a loving, caring person. And, Judge, I have no reason to  
23 doubt that that's not true. And that's who he is at his core,  
24 as a human being, which is why he's suffering today.

25 The first day I met Mr. Lopez he was crying so hard I

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1 could barely make out what he was saying. He struck me as a  
2 man who was caught and his worst nightmare caught up with him.  
3 But he also struck me as a man who is deeply in shame.

4 Now, one other point, Judge, and I raise it really as  
5 a minor point but to help explain. In our papers we weren't  
6 trying to make a Fernandez type of claim, that Mr. Lopez  
7 cooperated and he didn't get a letter. Judge, I sat in on some  
8 of those sessions. Mr. Lopez -- the government did everything  
9 they could to give Mr. Lopez an opportunity to come in. They  
10 certainly did. There were many meetings. The problem was  
11 simple. Every time we got together, he would tell a different  
12 story. And the stories weren't even close. They were just,  
13 What are you doing? And the meetings were stopped. And he was  
14 spoken to, and he said, OK, I will do better. And he would  
15 come in and maybe the first five minutes it sounded good and  
16 then he was just off. And this went on for like maybe four  
17 meetings. And at that point the government, in exasperation,  
18 having given him many, many opportunities to come in, decided  
19 that we would just work out a plea agreement in the case.

20 Now, the defendant doesn't get any credit for that.  
21 But my sense, Judge, is that he wanted to take responsibility  
22 for what he had done here. He wanted to try to cooperate.  
23 Judge, my sense is that he was too afraid. Too much anxiety to  
24 do it. And so it never happened for him. He just was  
25 incapable of pulling himself together to tell his very limited

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153 role in this horrible event, and he just was unable to do it.

154 And I don't think that he was malicious about that in any way.

155 I think emotionally he just wasn't able to accomplish that.

156 I'm not -- Judge, there is a broad range of sentence  
157 and punishment that could be imposed here. I don't think  
158 imposing a sentence one way or another can ever make up for the  
159 loss of life. But people are held accountable for their  
160 conduct; they should be. And I think everybody on both sides  
161 expects that to happen today.162 My belief, Judge, is that this is a difficult  
163 sentence -- sentencing. Mr. Lopez is clearly a lesser culpable  
164 person here, though not in the guidelines' sense of having a  
165 minor role, but just a person who has a lesser level of  
166 culpability both before, during and afterwards. That's  
167 apparent.168 And so what, then, is the sentence to be imposed upon  
169 him? We have asked the Court to consider his background,  
170 consider his potential for redemption. Yes, to consider his  
171 family that loves him and are brokenhearted and, also, Judge,  
172 to consider the family of Mr. Balcarran, and they have just as  
173 much interest in the outcome of this case as anyone. But this  
174 is truly an event -- a confluence of events that neither the  
175 victim's family nor Mr. Lopez's family apparently had no  
176 knowledge of or were aware of because no one spoke about it.  
177 They know these individuals for the good that they did in life.

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1 And so we submitted our request for sentence at variance with  
2 the guidelines.

3 No recommendation was made because, quite frankly,  
4 Judge, I don't know what recommendation should be made. I do  
5 know that this Court thinks very, very seriously and very  
6 heavily about the factors that are set forth in 3553(a), and  
7 this Court would probably do it even if the factors weren't set  
8 forth in 3553(a) but they are. So we're asking the Court to  
9 impose a sentence at variance with the guidelines to take into  
10 consideration all of the tremendous factors that the Court  
11 must, the tremendous loss of life here, the waste of  
12 fatherhood, the waste of promise, and impose a sentence that's  
13 sufficient but not greater than necessary to address the loss  
14 of life in this case.

15 Thank you very much, your Honor.

16 THE COURT: Mr. Lopez, is there anything you want to  
17 say before the Court imposes sentence?

18 THE DEFENDANT: Yes. Thank you, your Honor.

19 I would like to -- before I address my family, I would  
20 like to say something first to the family of the victim. I  
21 want them to forgive just because I was there. I'm really  
22 sorry. I want you to look at the eyes and see how sorry I am.  
23 Sorry I ever been there and I didn't do anything about it. I  
24 was afraid. I was young. It was nothing I can do for stop  
25 this.

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1 Now I'm here facing you, your Honor, and I feel so  
2 sorry for what I've done. I wish them to forgive me for never  
3 say anything, to keep the silence for being scared. Sorry,  
4 guys.

5 Can I say something to my family now?

6 THE COURT: Yes.

7 THE DEFENDANT: I can look at them?

8 THE COURT: Yes.

9 THE DEFENDANT: I work hard for you. And we got a lot  
10 of dreams, remember? Remember what I said, I was going to get  
11 a house in Tampa my mother dreams, that I was just too -- I had  
12 everything I want, but this is one of the saddest days of my  
13 life to say goodbye to you because you remember what I used to  
14 do. I remember everything. I'm really sorry. There is  
15 another family, you know. You know that I did the best that I  
16 can.

17 And to all my nephews, I love you so much. Now this  
18 is -- you gotta see me like this. It's so sad because I'm your  
19 role model. I really apologize. I want you to stay in school.  
20 I want you to do the great work. Remember, I told you, you are  
21 going to be a great boxer in the future, remember? Stay in  
22 school. I love you guys.

23 Your Honor, I want to apologize to you, your Honor,  
24 for the mistake that caused my life, the life of my kids. And  
25 so much stuff that I have inside of me, so much talent that I

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153 have, that I can do better, that I can make a promise of my  
154 life. Now my children stay without a home because of this. My  
155 children are suffering right now. There is a lot of people  
156 that come to this courtroom but they don't feel how I feel.

157 Yes, your Honor I made the mistake. This mistake cost  
158 me so much. I was about to be a head mechanic, and look at me  
159 now being sentenced. Now, my family, they have nowhere to go.  
160 But I have no excuse for being where I am at right now. It was  
161 all mine for being there.

162 I just wish this be over and I wish to be home with my  
163 family, with my loved ones. I wanted them be here because my  
164 daughter just gave birth to my grandbaby that I haven't seen.  
165 My son, my father. This is not the person that I am. It is  
166 not. The person that is in that paper is not me. I'm a loving  
167 father. I am a good person.

168 All those kids back there, they are my nephews. For  
169 when I seen them was babies. For them, I'm their superman.  
170 It's so hard not to be around them when I'm out here and I  
171 don't know what is going to happen to me, but I hope I'm home  
172 shortly, that I can be home with my kids. Only God knows.

173 And, your Honor, thank you for giving me this  
174 opportunities.

175 Thank you, your Honor, for my last day.

176 THE COURT: I'll hear from the government.

177 MS. KORENBAUM: Thank you, your Honor.

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1 I will be brief.

2 And, your Honor, Mr. Ricco spoke of the devastation to  
3 the communities that is the result of this type of violence,  
4 and it just makes me think that there are people, good people  
5 within those communities who face the threat of violence and  
6 face the prospect that something bad might happen to them.  
7 They don't resort to murder, your Honor. They resolve their  
8 issues and they resolve their problems short of violence.

9 Mr. Lopez had a choice. He had a choice to make. The  
10 choice that he made was to procure gunmen to solve his problem.  
11 He could have resolved it in a different way and he chose not  
12 to. And so what we're left with now is devastation for both  
13 families. No doubt about that, your Honor, both families are  
14 devastated. We have both families without a father, and that  
15 is the result of the choice that Mr. Lopez has made.

16 I question whether his level of culpability is that  
17 low, your Honor. Perhaps within the drug organization it was,  
18 but he's the one who procured the gunmen. He's the one who  
19 went to his cousin, whom he believed to be a very violent man.  
20 So there is no question how he chose to resolve his problems  
21 and his issues.

22 And he must have been a valued member of that drug  
23 organization if the leader of the organization trusted him so  
24 much to bring him into a murder, and so I think his level of  
25 culpability insofar as the murder is concerned certainly is

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1 quite up there at the top, your Honor.

2 We have asked the Court to sentence Mr. Lopez within  
3 the guidelines' rage. We think it is appropriate for the  
4 conduct. It is appropriate for the consequences that resulted  
5 from that conduct. And so we would ask the Court once again to  
6 sentence Mr. Lopez within the guidelines' range.

7 THE COURT: Ms. Korenbaum, who is going to be speaking  
8 on behalf of the family?

9 MS. KORENBAUM: Your Honor, there are six family  
10 members here. Would you like me to identify them for the  
11 record first?

12 THE COURT: Yes.

13 MS. KORENBAUM: Yes. We have Mr. Balcarran's  
14 daughter, Bethanni Balcarran; his fiancée at the time of the  
15 murder, Terrelle Daniels; his sister -- and I hope I'm  
16 pronouncing this correct -- Alnisa Dampier; his nephew, Shareef  
17 Ferrer; his son-in-law, Dennis Derry, and his aunt, Stephanie  
18 DeFelice.

19 THE COURT: All right. Ms. Balcarran, I'll hear from  
20 you.

21 MS. BALCARRAN: I'm so nervous. My name is Bethanni  
22 Balcarran. I'm Andrew Balcarran's daughter.

23 When I was four my mother was murdered. She was shot  
24 in the head. When I was 12, because of the lies of this man,  
25 my father's life was taken. My father wasn't with me for the

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1 major milestones in my life: The father/daughter dances, the  
2 mother/daughter dances I couldn't attend.

3 I can't even read off the piece of paper.

4 My father wasn't there when I became a mother. It  
5 wasn't the best day of my life. He wasn't there. He didn't  
6 speak of not seeing his grandchildren here, but my father can't  
7 see his. I have a little boy. He is 2. His name is Mason.  
8 He is over here. Stand up, Mason.

9 He acts just like my father, and when he moves I  
10 can't -- I have to see his face. His face is a reminder of  
11 what happened.

12 My father -- I have a brother. My father never got  
13 the chance to introduce us as siblings so we're not close. He  
14 also has children who will never meet him either. My father  
15 and my brother never got the chance to have a relationship. My  
16 father was a good man. He wasn't perfect. He was a good man.  
17 He had a heart. He didn't deserve what happened. He didn't.  
18 I didn't deserve what happened.

19 This man lied to a member of his family, because he is  
20 a coward, to have my father killed. We speak of compassion.  
21 We speak of his family. This man had the food shot out of my  
22 father's stomach and I had to see it and listen to it.

23 My life has been screwed because of him and his lies  
24 and these coward men and their stupid decisions. I'm young,  
25 too. I don't take people's lives because I was young and I

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1 didn't know what I was doing. Everybody knows what they're  
 2 doing when they're taking a life.

3 You knew what you were doing. I'm getting married in  
 4 March. My father's not going to be there to walk me down the  
 5 aisle. Not only did this man take my father's life, he took  
 6 two. Speak of his mother, the loss of his family. After my  
 7 father was shot, my grandmother basically made it her life to  
 8 find who killed him to seek justice. Her health declined. The  
 9 last time the ambulance was called to her house to pick her up  
 10 before she died, on her walker spread out were my father's  
 11 funeral cards. Shortly after that, my grandmother died holding  
 12 my hand -- with no justice. This man doesn't deserve to walk  
 13 the streets. He doesn't.

14 He altered my life, my family's lives through lies.  
 15 He's a liar. He's a coward. He is a murderer. He can speak  
 16 to his family. He can tell his children how much he loves  
 17 them. My father never got to say a word to me. My father  
 18 never got to tell me he loved me before he died, before his  
 19 food was shot out of his stomach. And then I find out all his  
 20 cousin got after killing my father was a car ride and a  
 21 T-shirt -- cab fare and a T-shirt, and that's all my father's  
 22 life was worth.

23 This man doesn't deserve to walk the streets, your  
 24 Honor. He doesn't.

25 That's all I could think of to say.

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1 THE COURT: Ms. Daniels.

2 MS. DANIELS: I just want to say, I just wanted to put  
3 a face of the person who life ruined my life and they gave him  
4 ten years' house arrest, time to fix your life and change and  
5 be sorry and hurtful and remorse, and we've been in pain since  
6 2002 up until this minute. So now your family, they got to  
7 cry. They've got to be hurt. They've got to suffer. They've  
8 got to go through what we went through. And I don't think we  
9 should have no remorse. I don't care if you are sorry, we all  
10 in pain.11 With you pain, you could see and could talk to you  
12 through bars. You ruined my life in spite of my face and can't  
13 even look me in my face, so you're not sorry.14 I've been sorry. I'm still sorry. I'm still in pain.  
15 I want your family to feel that same pain. That's what I want  
16 to say.

17 THE COURT: Ms. Dampier.

18 (Pause)

19 MS. DAMPIER: Good afternoon, your Honor.

20 THE COURT: Good afternoon.

21 MS. DAMPIER: My name is Alnisa Dampier Miller.  
22 Andrew was my brother.23 First of all, I'd like to let you know that my mother  
24 passed away before any of these things transpired. My mother  
25 was very hurt and she became obsessed with finding the people

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1 that murdered my brother. And I just would like to read a  
2 little something.

3 I appreciate this opportunity to stand before you and  
4 tell you who my brother, Andrew Balcarran, really was, but  
5 first I'd like to allow my mother, Antoinette Balcarran Zaire,  
6 to have her voice heard through me before I give my own  
7 statement.

8 My mother passed away April 24, 2010. No.  
9 Correction. She stopped breathing on that day. She actually  
10 died in the early morning hours of August 12, 2002. My mother  
11 walked this earth for her final eight years pursuing justice  
12 for her son. She plastered her GMC truck with posters of Oscar  
13 Palmer, a/k/a "Tito," until she died. She had extensive  
14 contact with law enforcement pursuing this justice. She was  
15 unaware of the depth of involvement from the other people to  
16 help bring them to justice. However, she knew the names of  
17 some of the key players.

18 I'm saddened by the fact that she's not here to  
19 witness justice being served and to look into the eyes of the  
20 people that destroyed her life by murdering her only son. I'm  
21 grateful, however, in spite of her grief, that she never gave  
22 up hope that one day justice will be served whether she was  
23 here or not. I will read a statement that I've compiled from  
24 several drafts that I found while painfully sorting through her  
25 things by myself as her sole remaining child after her burial.

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1 And I quote:

2 My name is Antoinette Zaire. My son is Andrew  
3 Balcarran. If someone else is reading this or if my voice has  
4 been recorded, it is either because I feel that my heart and  
5 health would forbid me to read or speak to you or because I  
6 predeceased the end of the trial, unfortunately.

7 I would like -- I would have liked to see justice  
8 served properly. My family was forced into an early grieving  
9 and I was forced into an unnatural grieving for my child,  
10 Andrew Douglas Balcarran, when these animals executed my son.  
11 As John Walsh says, a life sentence of a broken heart.

12 Andrew was born February 1, 1966. He was a happy  
13 child and the apple of my eye. He was affectionately called  
14 Bam. He attended Blessed Sacrament High School in New  
15 Rochelle, and although he led a trouble life, he managed to  
16 obtain his GED. My son had problems with the law early in life  
17 and tried to turn his life around.

18 Andrew was disabled and unable to work at times  
19 because of a bad motorcycle accident. He had several jobs,  
20 from construction worker to dietary aide at St. Mary's Center  
21 in Manhattan. He always had a smile and a sense of humor for  
22 anyone he came in contact with. He was so big-hearted that  
23 when he had a barbecue, he didn't have it in seclusion or the  
24 privacy of his backyard; he had them out in the front yard  
25 where all are welcome, even the homeless. If you were passing

Gapdllops

## Sentence

1 by and he saw you, he would call you over to get something to  
2 eat or drink. The children especially had a great time, as  
3 this was done for them. Music blasting, people dancing, and  
4 everyone had a great time.

5 He was definitely a people person who loved his fellow  
6 man. All the neighborhood children loved their Uncle Andy. I  
7 myself was born and grew up on Franklin Avenue in the same  
8 house he lived in that my family owns. Back in the day, the  
9 neighborhood number runners would give out turkeys on  
10 Thanksgiving, liver on Christmas; in the summer they would have  
11 a block party. My son grew up with this tradition and gave  
12 back to the community in a similar fashion. Regardless,  
13 neither fire nor wind, birth nor death can erase our good  
14 deeds.

15 The last time I saw my son, he had come up to my house  
16 and spent the week with me to help me out. I am also disabled.  
17 He put up new curtain rods for me, changed his daughter's room  
18 around, and did a lot of errands that I wasn't able to do. We  
19 spent quality time together and laughed and loved, and so he  
20 left my home on August 1st. He left at that time to get back  
21 to the Bronx to put flowers on his daughter's mother's grave  
22 for her birthday on August 2nd. I never saw my son's beautiful  
23 brown eyes again.

24 On August 11, 2002, my son, my first born and only  
25 son, was viciously and brutally shot near his home on Franklin

Gapdlops

## Sentence

1 Avenue. My son died the morning of August 12th. As he lay  
 2 where a shotgun blast ripped open his left side, while coherent  
 3 and still alert he identified Tito as one of the shooters.  
 4 Andy always had a big, beautiful smile for everyone. Now I can  
 5 only see that smile in pictures and my mind's eye.

6 Years have gone by without the blink of an eye. He  
 7 was taken away and I never got to say goodbye, thank him, or  
 8 tell him how much I loved him, although I know that he knew.  
 9 I'm grateful to God that he allowed Andrew to be my son and  
 10 give me the love and joy that was my life. I'm also grateful  
 11 to God that he didn't let it be that I couldn't bury my child.  
 12 Some families are left wondering forever. I just want the  
 13 perpetrators to be brought to justice.

14 End quote.

15 My mother also wanted me to read this to you, your  
 16 Honor:

17 Everyone remembers when a child is born, but when that  
 18 child is taken, the memories are torn. Will anyone remember,  
 19 will anyone see all the joy and laughter that my son brought to  
 20 me? Will anyone remember the love he had to give and the way  
 21 he smiled, the way he talked, the way he lived? Will they  
 22 remember that my son lives on? Just look at me and you will  
 23 see the never ending bond. Will anyone remember that my job is  
 24 to keep his memory alive and celebrate his life? This is how I  
 25 can survive. And when it is his birthday, I can celebrate his

Gapdlops

Sentence

1 birth so everyone can remember that my son walked this earth.

2 And that was all from my mother, who struggled in the  
3 remaining years of her life trying to find justice for her son.  
4 Because of this act, her only focus was these five people that  
5 were involved in this. She was never really there anymore for  
6 anyone else. She devoted her entire life. It made her sick.  
7 It forced her into a stroke, and even after the stroke all she  
8 could talk about was her Andy.

9 Andy meant a lot to me, too. I'm his younger sister  
10 by 11 years. My brother took care of me from the time -- from  
11 way back before I could even remember. I remember being in  
12 preschool and him coming to pick me up from school on the back  
13 of his bike and making me sandwiches after school until my  
14 mother got home from work. She raised us both by herself. No  
15 help. He was all I had. He was my guardian and he was my  
16 hero. He was -- he doted on me like I was his own child.  
17 Before he had my niece and his son, I was his baby. He took  
18 care of me. He was my father, because my father died.

19 And these people took him away from us.

20 How can you do that? How can you look someone in the  
21 eye and take their life?

22 These cowards took my brother away and forced us into  
23 an unnatural grieving. We had to raise his 12-year-old  
24 daughter. Shouldn't he have been there to do that? Because of  
25 them, the house that I just mentioned, that my family owned on

Gapdlops

Sentence

1 Franklin Avenue, that has been in the family since the 1940s,  
2 it had to be sold because Andy no longer lived there and I  
3 couldn't bear to live there. He was killed just feet away from  
4 that door. My mother was born and raised in that house and now  
5 it doesn't belong to us anymore.

6 My son at the time of Andy's death, he was four years  
7 old. And people don't think that four-year-old kids can  
8 comprehend death or loss of a loved one. My baby cried for  
9 weeks. I got a call from his school one day saying that they  
10 needed to meet with me. And that particular day the teachers  
11 were telling the kids, you know, to draw pictures of people  
12 that you admire. A lot of kids drew pictures of firemen,  
13 policemen and such, Superman. My four-year-old baby drew a  
14 picture of my brother getting shot, and he said he wished he  
15 had his uncle Andy. How do I explain that to that baby? I  
16 couldn't.

17 I couldn't explain that to him, how to get over that.  
18 My son is still not over it. My son is 18 years old and still  
19 misses his uncle. And my son Shareef didn't have a father in  
20 his life. Andy was his father figure. Andy is the one that  
21 did everything with him. Even as a four-year-old kid, he loved  
22 his uncle. He doesn't have that now. He didn't have anyone to  
23 teach him how to shave his face. He didn't have anyone to talk  
24 to about the changes in his body as a man.

25 This man here, or shell of a man, he can talk to his

Gapdlops

## Sentence

1 kids. He can call him them up on the phone, write letters.

2 They can go visit him. He's not dead. He's not unreachable.

3 My brother, knowing that I am going to see my brother again is

4 just hard to ask. And I very well can't because I have these

5 people to look after, because right now I'm the matriarch of

6 this family because my mother is no longer here. I had to bury

7 my mother by myself. My brother should have been here for

8 that. I had to step up and be this person to protect this,

9 this strong image. My brother should have been here for that.

10 I just don't understand how he could sit here and, you  
11 know, be able to give advice to his children and his nephews  
12 and his family. Andy's not here to give that to his children  
13 or to his grandchildren. We have been subjected to a life  
14 sentence, a life sentence of sadness, my entire family. I gave  
15 the statements that were given to me on Facebook and through  
16 email, from people that love my brother, people that had been  
17 in his life from the time he was in preschool.

18 My brother wasn't perfect. He wasn't a saint, by no  
19 means, but he is still a human being and he bleeds red blood  
20 just like everyone in this courtroom does. He should not have  
21 had his life taken for something so minute and so stupid.

22 And I don't care how much you say you're sorry. God  
23 will have to judge you. Because I can't fathom the hatred in  
24 my own heart. As much as I would like to hate you, I cannot  
25 force myself --

Gapdlops

## Sentence

1                   MR. RICCO: Your Honor, I'm going to object, under  
2 United States v. Eberhart. Victim statements -- I'm sorry,  
3 your Honor -- are made to the Court and they should not be done  
4 in a way that is making direct comments with the defendant,  
5 provoking a response.

6                   Mr. Lopez previously responded to the last person who  
7 spoke. I didn't object because I feel that people have a right  
8 to express themselves at the sentence, but I believe that that  
9 doesn't extend to a personal dialogue with Mr. Lopez.

10                  And I would also, your Honor, request the right to  
11 respond under United States v. Eberhart when these addresses  
12 are due, are complete.

13                  THE COURT: All right. Mr. Dampier, if you could  
14 focus on what it is you want to tell me rather than what it is  
15 you want to tell the defendant.

16                  Go ahead.

17                  MS. DAMPIER: I just felt like I needed to say that  
18 because Mr. Lopez turned around and mouthed "sorry" to me, OK,  
19 so I felt the need to answer his apology.

20                  THE COURT: I understand.

21                  MS. DAMPIER: I do not forgive him. Maybe someday in  
22 the future I can.

23                  But as far as his sentence is concerned, since we have  
24 been sentenced to a life of sadness, why not him? Why not his  
25 family?

Gapdlops

## Sentence

1 I'm not a very, very religious person but I found a  
 2 quote that I'd like to read from Matthew, Chapter 5, Verse 21  
 3 through 26: "You have heard that it was said to those of old,  
 4 'You shall not murder, and whoever murders will be liable to  
 5 judgment.' But I say to you that everyone who is angry with  
 6 his brother will be liable to judgment. Whoever insults his  
 7 brother will be liable to the counsel. And whoever says, 'You  
 8 Fool!' will be liable to the hell of fire.

9 "So, if you're offering your gift at the alter and  
 10 there remember that your brother has something against you,  
 11 leave your gift there before altering God. First be reconciled  
 12 with your brother and then come and offer your gift. Come to  
 13 terms quickly with your accuser while you are going with him to  
 14 court, lest your accuser hand you over to the judge and the  
 15 judge to the guard and you be put in prison. Truly I say to  
 16 you, you will never get out until you have paid the last  
 17 penny."

18 That's all I would like to say.

19 THE COURT: All right. I'll hear from Mr. Balcarran's  
 20 nephew.

21 Could you tell us your name, sir?

22 MR. FERRER: Shareef Ferrer.

23 THE COURT: Go ahead.

24 MR. FERRER: My mom is right. He was like a father to  
 25 me. The only memory I have of him was of him kissing me and

Gapdlops

## Sentence

1 telling me he loved me. It sucks not to have an uncle. It  
2 sucks when I see photos of him, not even a video, nothing, just  
3 photos, and the stories about him, how much of a great man he  
4 was.

5 I know how much he made an impact on my family, how  
6 much he impacted Bethanni and my mom.

7 I think this man deserves the life sentence. There is  
8 no way that Andy could come back. I wish he would.

9 (Pause)

10 I'm never going to forget him, I'm never going to  
11 forget my uncle.

12 I know when my mama told me how he died, I couldn't  
13 bear to hear everything that she told me. I read everything.  
14 I read the autopsy. I read everything. It sucks to hear that  
15 an old family member and read about how and exactly how he  
16 died, what he died from, all the wounds, everything. From  
17 beginning to end, that was the worst thing I ever heard in my  
18 life.

19 That's all I have to say.

20 THE COURT: All right. I'll hear from Mr. Balcarran's  
21 son-in-law.

22 Could you tell us your name, sir?

23 MR. DERRY: My name is Dennis Derry.

24 My fiancée, Bethanni Balcarran, is the daughter of  
25 Andrew Balcarran. I have two kids, Skylar, 4, and Mason, 2.

Gapdlops

Sentence

1 They will never get to know their grandfather.

2 I was never given an opportunity to meet Andrew  
3 Balcarran and ask for Bethanni's hand in marriage. Bethanni  
4 and I have her father walk her down the isle at the wedding.  
5 Andrew will never see how much his daughter has accomplished in  
6 her life and to see her (sic) daughter as a mother. Andrew  
7 would have been so proud of her. Andrew would have seen all of  
8 that, but because of a lie he was killed.

9 Luis Lopez should be sent to prison for having Andrew  
10 killed and for my family to suffer for the rest of our lives.

11 Thank you.

12 THE COURT: Ms. DeFelice.

13 MS. DeFELICE: I just want to say one of the things is  
14 with this event, everybody's life had stopped, the whole  
15 family, and that's, as Alnisa said, Antoinette's life,  
16 everything stopped, and her main claim was -- her main focus  
17 was to find these people. We all drove around with the posters  
18 on our car. We all worked together trying to find out what  
19 happened, because that day it was like the world stood still.

20 I was trying to listen just now when Mr. Lopez was  
21 talking to us. I'm not sure if he addressed the family or  
22 looked at them to say anything to them; I really didn't get all  
23 of that. But this is something that affected everybody in this  
24 family no matter where we were. I wasn't in New York, I don't  
25 think, at that time but it affected me. My life stopped and as

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Sentence

1 everybody else in this family did.

2 I just want to say that this is something that's  
3 hard -- I just can't think of how this was done so  
4 deliberately. Andy was doing something for the neighborhood,  
5 for everyone to celebrate, and for this thing to happen like  
6 that just because of something that was very trivial, I don't  
7 know. But I hope that the right balance is given to Andy's  
8 family, his sister, his mother who has passed, the rest of the  
9 family that's here.

10 I can't do anything more. Like Alnisa said, I pray to  
11 forgive but it's still in my heart every day. Everything is  
12 played out like it was yesterday, clear as can be.

13 And so this is all I can say right now. Thank you.

14 THE COURT: Mr. Ricco, is there something else you  
15 wanted to say?

16 MR. RICCO: You know, Judge, I really don't. I have a  
17 great deal of respect for people to grieve and to express  
18 themselves. I'm always concerned about how my silence or lack  
19 of objection will be viewed by others down the line. I know  
20 that this Court listens greatly, and I know this Court is not  
21 unduly prejudiced by comments.

22 I just want to say for the record that there has been  
23 a constant referral to -- that this happened because of a  
24 "lie," that Mr. Balcarran was doing something positive for the  
25 neighborhood. Judge, I didn't sit through the trial. I am not

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## Sentence

1 familiar with the events that took place. I rely upon the  
2 presentence report and the information that was provided to us  
3 by the government. I don't want to belabor the record, we  
4 think, but my understanding of what this event -- why this  
5 event took place was provided in sworn testimony before your  
6 Honor as to what the circumstances were related to it. I don't  
7 want to restate them, I don't have to.

8 And I understand how important and what the  
9 relationship is between the victims and the deceased. It is  
10 heartfelt. It is genuine. And I would ask the Court to not  
11 evaluate Mr. Lopez's conduct, whatever weight the Court gives  
12 to it, based upon a lie, because that is not my understanding  
13 of why these events took place and what happened as set forth  
14 in the presentence report.

15 THE COURT: Anything else --

16 MR. RICCO: Thank you very much, your Honor.

17 THE COURT: Anything else the government wishes to  
18 say?

19 MS. KORENBAUM: Just briefly, your Honor.

20 I believe that what the family members who attended  
21 the trial are referring to is the testimony by the cooperating  
22 witness that his cousin left out the part that this was at  
23 least in large measure over drug territory and not just a  
24 threat. I think that's what they are referring to.

25 THE COURT: Sorry. Could you expand on that a little

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## Sentence

1 bit? I am having a little trouble understanding your point.

2 MS. KORENBAUM: I believe, your Honor, that the events  
3 leading up to the murder, Mr. Lopez went to his cousin and, as  
4 the cousin testified, told him that he was being threatened and  
5 so the cousin wanted to protect him and wanted to help him.  
6 However, there was another aspect to this as well. It wasn't  
7 just about a threat; it was also about drug territory and  
8 wanting to maintain drug territory. So there were at least two  
9 reasons for the murder, and I believe that's what the family  
10 members were referring to when they say Mr. Lopez in part lied  
11 by excluding that piece of information when he went to his  
12 cousin to procure the murder.

13 THE COURT: OK. In deciding upon an appropriate  
14 sentence, I have considered all the factors listed in Title 18,  
15 United States Code, Section 3553(a), including the nature and  
16 circumstances of Mr. Lopez's offense, his personal history and  
17 characteristics, the need for the sentence imposed to reflect  
18 the seriousness of the offense -- and it is a very serious  
19 offense -- the need to promote respect for the law, to provide  
20 just punishment, and to afford adequate deterrence to criminal  
21 conduct.

22 I will begin with the nature and circumstances of the  
23 offense.

24 Mr. Lopez pleaded guilty to violating Title 18, United  
25 States Code, Section 924(j) by during and in relation to a drug

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## Sentence

trafficking conspiracy, together with others, causing the death of Andrew Balcarran, and he did that by aiding and abetting others who discharged a firearm at Mr. Balcarran in the vicinity of Franklin Avenue and East 169th Street in the Bronx. And the murder happened on August 11, 2002, but the case was not charged until 2014.

The evidence at the trial of Efrain Lora, as well as the facts set forth in the presentence report, indicate that the murder of Andrew Balcarran was the result of a dispute over drug turf in the vicinity of Franklin Avenue and East 169th Street. Mr. Lopez was a street-level seller of cocaine in that area. As of August 2002, he sold cocaine at that location pretty much every day. Mr. Lopez was supervised by his codefendant, Oscar Palmer, also known as "Tito," who paid him \$500 a week. Tito obtained the cocaine sold by Luis Lopez from codefendant Efrain Lora.

Andrew Balcarran was selling drugs in the same neighborhood. On or about August 11, 2002, he confronted Mr. Lopez on Franklin Avenue. He punched him in the face, knocking him to the ground. Mr. Balcarran instructed Lopez to tell his boss Tito that Mr. Balcarran owned the block and that if Tito wished to sell drugs on that block, he was going to have to pay Mr. Balcarran.

Mr. Balcarran told Lopez that if he saw him selling drugs on the block again, he would kill him. Mr. Balcarran

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## Sentence

1 also directly threatened Tito and Luis Trujillo, another member  
2 of the cocaine conspiracy.

3 Tito reported Mr. Balcarran's threats to Efrain Lora,  
4 who was the head of the cocaine conspiracy at that location.  
5 And Mr. Lora stated that it was time to get rid of  
6 Mr. Balcarran. Tito agreed, and told Mr. Lopez that he would  
7 have to kill Mr. Balcarran. Lopez, who didn't want to commit  
8 the murder, suggested that his cousin Dery Caban commit the  
9 murder.

10 Mr. Caban was close with Mr. Lopez, who was his only  
11 relative in the area, and they spoke daily.

12 Tito, Mr. Lopez, and Luis Trujillo then drove to  
13 Mr. Caban's home. Tito and Luis Lopez explained to Caban that  
14 Mr. Balcarran had threatened to kill Luis Lopez and that Tito,  
15 Lopez and Luis Trujillo all were afraid for their lives.  
16 Mr. Caban agreed to kill Mr. Balcarran for them, and it is  
17 undisputed that Mr. Caban agreed to help in order to protect  
18 Mr. Lopez, his cousin.

19 These four men then went to Mr. Trujillo's home, where  
20 he stored firearms. Trujillo put a shotgun and a handgun in  
21 the back seat of Tito's car. Mr. Lopez got into the car with  
22 Efrain Lora, and the two men began searching for Mr. Balcarran.  
23 They spotted him in the vicinity of Franklin Avenue and  
24 169th Street, near Mr. Balcarran's home.

25 Lora then called Tito, who was in a separate vehicle

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## Sentence

1 with Caban and Luis Trujillo, and reported where Mr. Balcarran  
2 was. Trujillo drove to that location. When they spotted  
3 Mr. Balcarran, Tito called Mr. Balcarran over to the car.  
4 Caban, who was sitting in the back seat, then lowered the  
5 window and shot Mr. Balcarran with the shotgun. Tito then got  
6 out of the car and shot Mr. Balcarran several times with a  
7 handgun.

8 Trujillo then drove away. Lora and Luis Lopez drove  
9 down the block in their car to confirm that Mr. Balcarran had  
10 been killed. Tito and Mr. Trujillo fled to the Dominican  
11 Republic. Lora remained in the area and continued to sell  
12 drugs there for many years. Mr. Lopez contends that he stopped  
13 selling drugs at that point and turned his life around, and  
14 there is no evidence before me that contradicts that assertion.

15 Let me say that this was a vicious, vicious crime.  
16 Mr. Balcarran was brutally murdered in front of his home and  
17 within earshot of his family. He had a 12-year-old daughter at  
18 the time, who we've heard from this afternoon and to whom he  
19 was the only parent, given that the daughter's mother had died  
20 when she was four years old. The effect on the victim's family  
21 was devastating, as is evident from the letters that have been  
22 sent to the Court and as is evident from the statements that  
23 have been made in court this afternoon.

24 As to Mr. Lopez's personal history and  
25 characteristics, he's 40 years old. He has no criminal record.

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Sentence

1 It is highly unusual to find a defendant charged with a crime  
2 as serious as this who has no criminal record. Mr. Lopez was  
3 born and raised in Puerto Rico in a stable home. His family  
4 lived in a dangerous, crime-ridden neighborhood, however, and  
5 at age 17 his parents sent him to live with an uncle in New  
6 York.

7 The uncle was a building superintendent and Mr. Lopez  
8 worked for him for about a year and a half. He wasn't paid  
9 much. Mr. Lopez became convinced that his uncle was taking  
10 advantage of him and so he went out on his own and worked at  
11 odd jobs to support himself. Eventually, he began selling  
12 drugs. He also started using marijuana and cocaine.  
13 Eventually, he turned to ecstasy.

14 Mr. Balcarra was murdered on August 11, 2002.  
15 Mr. Lopez appears to have turned his life around after the  
16 murder. He entered a three-year drug treatment program which  
17 he completed successfully. According to Mr. Lopez, he's been  
18 drug-free since that time.

19 In 2002, he began what would become a 13-year  
20 relationship with his girlfriend and her two young children,  
21 whom he helped raise. Mr. Lopez also secured legitimate  
22 employment working at Auto Zone, in construction, and between  
23 2007 and his arrest in 2015, at a heating supply company in  
24 Queens.

25 Before I go further, there's one legal issue that the

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Sentence

1 parties addressed in their papers, although it was not raised  
2 this afternoon, and that is the applicability of the five-year  
3 minimum mandatory sentence applicable under 18 United States  
4 Code Section 924(c). The government contends a five-year  
5 minimum mandatory sentence is applicable under that section.  
6 The defendant contends that no mandatory minimum is applicable.

7 The case law is split on the issue. In a summary  
8 order that is, of course, not binding on me, the Second Circuit  
9 has stated that the mandatory minimum term of imprisonment set  
10 forth in Section 924(c), that those mandatory minimum terms  
11 of imprisonment are also applicable to convictions under  
12 924(j). See United States v. Young, 561 F. App'x 85, at 93 (2d  
13 Cir. 2014) ("In light of the explicit incorporation [of  
14 Subsection 924(c) into subsection 924(j)], Section 924(j)'s  
15 failure to repeat the penalty enhancement set forth in Section  
16 924(c) does not evince Congressional intent to permit  
17 concurrent sentencing and to eliminate mandatory minimum  
18 sentences." (Citing United States v. Allen, 247 F.3d 741, 769  
19 (Eight Circuit 2001)); see also United States v. Berrios, 676  
20 F.3d 118 at 140-41 (3d Cir. 2012), holding that consecutive  
21 sentence mandate of Section 924(c) applies to a conviction  
22 under Section 924(j). Other courts, however, have rejected the  
23 contention that the mandatory minimum terms of imprisonment set  
24 forth in Section 924(c) are applicable to convictions under  
25 Section 924(j). See United States v. Julian, 633 F.3d 1250,

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1255-57 (11th Cir. 2011).

2                   In my judgment, those courts that have found that  
3 Section 924(c)'s mandatory minimum terms of imprisonment apply  
4 to convictions under Section 924(j) have the better of the  
5 argument. Not only does Subsection 924(j) apply to particular  
6 offenses committed "in the course of a violation of Subsection  
7 (c)," but -- as the Second Circuit noted in Young -- an  
8 alternative interpretation would lead to the peculiar result of  
9 having mandatory imprisonment terms where a defendant uses a  
10 firearm but not where he actually commits a murder with a  
11 firearm. See Young 561 F. App'x. at 93-94. This issue is  
12 ultimately not material here, however, because as I will  
13 explain in a moment I have decided to sentence Mr. Lopez to a  
14 term of imprisonment greater than five years. Accordingly, the  
15 mandatory minimum issue has not in any way influenced my  
16 sentence.

17                   To summarize, the guidelines recommend a sentence of  
18 between 292 and 365 months' imprisonment. The Probation  
19 Department has recommended a sentence of 25 years'  
20 imprisonment. The government seeks a sentence within the  
21 guidelines' range. The defense seeks a variance from the  
22 guidelines' range but has not suggested what would be an  
23 appropriate sentence.

24                   With all of this in mind, I will now describe the  
25 sentence I intend to impose and then I will ask the parties if

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## Sentence

1 there is anything further they wish to say.

2 Mr. Lopez committed a very serious crime. He aided  
3 and abetted a murder. He procured the shooter, and he helped  
4 find the victim. It was Mr. Lopez who suggested that his  
5 cousin, Dery Caban, might be willing to commit the murder. And  
6 Caban agreed to commit the murder, and he testified at the  
7 trial of Efrain Lora that he agreed to commit the murder in  
8 order to protect his cousin, Mr. Lopez. Therefore, legally,  
9 morally, and practically, Mr. Lopez is responsible for  
10 Mr. Balcarran's death.

11 But the surrounding circumstances and the relative  
12 culpability of Mr. Lopez cannot be ignored. Mr. Lopez was the  
13 low man on the totem pole. He was a street-level seller of  
14 drugs. Although he was beaten by Mr. Balcarran and threatened  
15 by him if he continued to sell drugs on the block, it was not  
16 his decision to kill Mr. Balcarran. That decision was made by  
17 Mr. Lora and the co-conspirator Oscar Palmer, who we've  
18 referred to as "Tito."

19 When Tito told Mr. Lopez that he would have to kill  
20 Mr. Balcarran, Mr. Lopez didn't want to do it and so he  
21 suggested that his cousin might be willing to take on that job.  
22 In any event, the point is that Mr. Lopez did not make the  
23 decision that Mr. Balcarran would be killed; that decision was  
24 made by the leaders of the conspiracy -- Mr. Lora and Oscar  
25 Palmer.

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## Sentence

1                   Moreover, while all life is precious, including the  
2 life of Andrew Balcarran, I cannot ignore the fact that  
3 Mr. Balcarran was selling drugs and that he threatened to kill  
4 Mr. Lopez and his co-conspirators if they continued selling  
5 drugs on his block. Lora, Tito, and their co-conspirators  
6 concluded that if they did not kill Mr. Balcarran, he would  
7 likely kill them. He had said as much. That doesn't excuse  
8 Mr. Lopez's crime but it puts it in context.

9                   I also cannot ignore the fact that Mr. Lopez  
10 maintained a law-abiding life for the next 13 years. Indeed,  
11 he appears to have completely turned his life around after the  
12 murder. He stopped using drugs. He stopped selling drugs. He  
13 got a job and maintained lawful employment for the next 13  
14 years. He entered into a long-term relationship, and began  
15 helping to raise his girlfriend's young children.

16                   I also cannot ignore the fact that Mr. Lopez has no  
17 criminal record and that he is 40 years old and thus has aged  
18 out of the period during which the risk of recidivism is  
19 greatest. To put it another way, it would not be fair, just,  
20 or rational to treat Mr. Lopez as another defendant who aided  
21 and abetted a murder but then went on to commit additional  
22 crimes for the next 13 years.

23                   Having said that, a life was taken, a murder was  
24 committed, and Mr. Lopez bears responsibility for that murder.  
25 His culpability is not as great as other defendants in the case

Gapdlops

Sentence

1 but he bears responsibility. Accordingly, a significant term  
2 of imprisonment must be imposed. But I'm not convinced that a  
3 sentence of 25 to 30 years is necessary either to protect the  
4 community or to serve all the other purposes of sentencing.

5 Despite his crime, given his 13 years of law-abiding  
6 conduct, I do not believe that Mr. Lopez presents a high risk  
7 of recidivism. I also do not believe that a sentence within  
8 the guidelines' range would accurately reflect Mr. Lopez's  
9 culpability relative to that of his co-conspirators.

10 Under all these circumstances, I have concluded that a  
11 sentence of 10 years' imprisonment is appropriate.

12 With respect to supervised release, I intend to impose  
13 a sentence of five years.

14 I intend to impose the following mandatory conditions  
15 of supervision:

16 Mr. Lopez will not commit another federal, state, or  
17 local crime.

18 He will not illegally possess a controlled substance.

19 He will not possess a firearm or destructive device.

20 He will cooperate in the collection of DNA as directed  
21 by the Probation Office.

22 It is my intention to suspend the mandatory drug  
23 testing condition in favor of a special condition requiring  
24 drug treatment and testing.

25 I intend to impose the first 13 standard conditions of

Gapdllops

Sentence

1 supervised release along with the following special conditions:

2                   Mr. Lopez will participate in an outpatient drug  
3 treatment program approved by the U.S. Probation Office, which  
4 may include testing to determine whether he has reverted to the  
5 use of drugs. I authorize the release of available drug  
6 treatment evaluations and reports to the substance abuse  
7 treatment provider.

8                   Mr. Lopez will submit his person, residence, place of  
9 business, vehicle, or any other premises under his control to a  
10 search on the basis that the probation officer has a reasonable  
11 belief that contraband or evidence of a violation of the  
12 conditions of the release may be found. Any search must be  
13 conducted at a reasonable and in a reasonable manner. Failure  
14 to submit to a search may be grounds for revocation. Mr. Lopez  
15 will inform any other residents that the premises may be  
16 subject to search pursuant to this condition.

17                   Mr. Lopez will report to the nearest Probation Office  
18 within 72 hours of release from custody.

19                   I do not intend to impose a fine because I find the  
20 defendant lacks the ability to pay a fine.

21                   I'm required to impose a \$100 special assessment.

22                   Mr. Ricco, is there anything further you wish to say?

23                   MR. RICCO: Yes, Judge, just one other thing.

24                   Your Honor, we recognize that it is just a  
25 recommendation, but we would request that the Court make a

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152 Sentence

153 recommendation that the defendant be housed in either Otisville  
154 or the Fort Dix facility. Both are near the city area, and it  
155 would help him maintain a relationship with the young children  
156 who have been part of his life.

157 THE COURT: Mr. Lopez, anything further you wish to  
158 say?

159 THE DEFENDANT: No, sir.

160 THE COURT: Anything else from the government?

161 MS. KORENBAUM: Nothing, your Honor. Nothing.

162 THE COURT: Mr. Lopez, for the reasons I just stated,  
163 it is the judgment of this Court that you be sentenced to ten  
164 years' imprisonment and five years of supervised release. Your  
165 term of supervised release will be subject to the mandatory,  
166 standard, and special conditions of supervised release I just  
167 mentioned.

168 You are also ordered to pay a special assessment in  
169 the amount of \$100.

170 Ms. Korenbaum, are there open counts?

171 MS. KORENBAUM: There are not, your Honor.

172 THE COURT: All right. I do recommend to the Bureau  
173 of Prisons that Mr. Lopez be incarcerated as close as possible  
174 to the New York metropolitan area and preferably at the federal  
175 institutions at Otisville, New York, and in Fort Dix.

176 Mr. Lopez, I am required to advise you of your appeal  
177 rights. You can appeal your conviction if you believe that

157 Gapdlops

## 158 Sentence

159 your guilty plea was unlawful or involuntary or if there is  
160 some other fundamental defect in the proceedings that was not  
161 waived by your guilty plea. You also have a statutory right to  
162 appeal your sentence under certain circumstances. With few  
163 exceptions, any notice of appeal must be filed within 14 days  
164 of judgment being entered in your case. Judgment will likely  
165 be entered tomorrow.

166 Mr. Ricco will discuss with you whether or not you  
167 wish to file a notice of appeal.

168 If you are not able to pay the costs of an appeal, you  
169 may apply for leave to appeal in forma pauperis. If you  
170 request, the Clerk of the Court will prepare and file a Notice  
171 of Appeal on your behalf.

172 Is there anything further?

173 MS. KORENBAUM: Nothing from the government, your  
174 Honor.

175 MR. RICCO: No, your Honor. Thank you.

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